



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

July 19, 2016

Memorandum for: Deputy Commissioner, Trials

Re: **Lieutenant Christopher Devaney**
Tax Registry No. 901448
94 Detective Squad
Disciplinary Case No. 2015-13213

The above named member of the service appeared before Assistant Deputy Commissioner Nancy R. Ryan on March 7, 2016, charged with the following:

DISCIPLINARY CASE NO. 2015-13213

1. Said Lieutenant Christopher Devaney, on or about March 22, 2014, at approximately 2030 hours, while assigned to Patrol Borough Queens North Anti-Crime Unit and on duty, in the vicinity of 32-100 100th Street, Queens County, did wrongfully use force against Person A in that he pushed him, without police necessity.

P.G. 203-11

USE OF FORCE

In a Memorandum dated May 6, 2016, Assistant Deputy Commissioner Nancy R. Ryan found Lieutenant Christopher Devaney Guilty of the sole Specification in Disciplinary Case No. 2015-13213. Having read the Memorandum and analyzed the facts of this matter, I disapprove the Guilty finding for Lieutenant Devaney. I have considered the totality of the issues and circumstances of this disciplinary case and deem that Lieutenant Devaney be found Not Guilty in this matter.


William J. Bratton
Police Commissioner



POLICE DEPARTMENT CITY OF NEW YORK

May 6, 2016

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Christopher Devaney
Tax Registry No. 901448
94 Detective Squad
Disciplinary Case No. 2015-13213

Charges and Specifications:

1. Said Lieutenant Christophe Devaney, on or about March 22, 2014, at approximately 2030 hours, while assigned to Patrol Borough Queens North Anti-Crime Unit and on duty, in the vicinity of 32-10 100th Street, Queens County, did wrongfully use force against Person A, in that he pushed him, without police necessity.
P.G. 203-11 - USE OF FORCE

Appearances:

For CCRB-APU: Andre Applewhite, Esq.
Civilian Complaint Review Board
100 Church Street, 10th floor
New York, New York 10007

For the Respondent: James Moschella, Esq.
Karasyk & Moschella, LLP
233 Broadway-Suite 2340
New York, New York 10279

Hearing Date:

March 7, 2016

Decision:

Respondent is found Guilty

Trial Commissioner:

ADCT Nancy R. Ryan

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on March 7, 2016. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. Respondent called Police Officer William Seidman and Respondent testified on his own behalf. CCRB submitted a hearsay statement of Person B and a video of the incident. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Guilty of the charged misconduct.

FINDINGS AND ANALYSIS

It is undisputed that on March 22, 2014, Respondent was assigned to the 115 Precinct as Queens North Borough Crime supervisor. He was patrolling in plainclothes in an unmarked car with Officer Seidman and Officer Sanchez. At approximately 8:30 PM, they stopped near 32nd Avenue and 100 Street.

Respondent testified that they stopped near a parked van because he saw someone shining a flashlight into the van and "usually that's a sign of somebody breaking into a car or some sort of criminal activity." (Tr. 20-21) As Respondent got closer to the van he recognized it from a previous car stop. During that previous stop, the driver, Person C told Respondent that it was his boss's van. Respondent told him to tell his boss that the stickers on the van did not match the plates and his boss should take care of it. (Tr. 21) Respondent and the two officers exited their vehicle and approached the van. There was someone in the driver and passenger seats. There were also two males, one of whom, Person B, had the flashlight, standing outside of the van. (Tr. 23) The second male was identified as Person A.

Respondent testified that Person B began cursing and saying, "Don't say a fucking word to these cops. I know my rights. They're not allowed to talk to you. You did nothing wrong. Don't show them your ID. Don't show them anything. You are not driving, they can't stop you. The keys aren't in the car." (Tr. 25) At this point, Respondent told Officer Sanchez to have the two men outside the van stand off to the side so he could continue to check out the van. (Tr. 25, 28) Respondent spoke to the driver, Person C, and then walked back to the unmarked car to run a check to determine whether the sticker now matched the plate. (Tr. 29) As he was walking, he heard the words, "I am going to fuck you up." He turned around and Person B was "basically on top of" him. Respondent thought that Person B might hit or assault him, so Respondent did a leg sweep and brought Person B to the ground. (Tr. 30)

Officers Seidman and Sanchez came to assist Respondent. One of them began to cuff Person B. (Tr. 30-31) At this point, Respondent had his back to Person A and he continued to give him verbal commands to stay back. He told him, "Don't interfere or you will be going to jail too." (Tr. 31) Person A kept coming forward and said "something like, "That's why we're glad you cops got shot in the head.'" Respondent acknowledged that he took this statement personally because he had a partner who was shot in the head. He thought of his partner when Person A made this statement. (Tr.54)

Respondent testified that, "at that point, for my safety, for my officers' safety, who still hadn't had Person B cuffed, I turned around and had to use the minimal physical force that was needed to effect the arrest for my officers --- what I thought for my officers' safety at that point. I pushed Person A back. It looks on the video like he might have tripped. He never fell to the ground." (Tr. 31)

Respondent pushed Person A away several more times. Respondent admitted he pushed Person A a total of four times. (Tr. 37) Respondent described Person A as using his body weight against him as he was pushing him. (Tr. 31-32) Person A never pushed Respondent back. (Tr. 49) Respondent testified that he continued to tell Person A to go home. Person A after being pushed by Respondent does turn around and head away from the scene of the arrest. As he is walking away Respondent pushed him one more time. Respondent testified that with regard to this last push, "I think I was at the point to push him and I couldn't stop. After the last push, Respondent testified that Person A turned around and said, "Okay." (Tr. 31-32) Person A walked away from Respondent and then returned and walked back past Respondent and turned the corner. (Tr. 32-33)

Police Officer Seidman testified that while he was placing Person B under arrest, Person A very quickly came up to Respondent's back and Respondent told him to get back. Person A then came towards them saying, "You guys should fucking die. Fuck cops. Cops should be shot." Officers Seidman and Sanchez got Person B into their car. Officer Seidman saw Respondent about twenty feet down the block and Respondent told him, "It's good. It's done." (Tr. 66) Officer Seidman saw Person A, who was no longer saying anything, walk back in their direction. (Tr. 69-70)

CCRB, having stipulated that Person A never filed a complaint with CCRB concerning this incident, presented the hearsay statement of Person B. (CCRB Ex. 1A and 1B). Person B stated in his interview that while he was being arrested, he saw a Caucasian officer he described as the driver of the unmarked car, "violently" pushing his cousin, Person A. (CCRB, Ex. 1B, 6, 18-19) He further stated that the officer pushed Person A in his chest

while Person A kept moving back. Person A turned around and Person B stated that the officer pushed him in the back. (CCRB Ex. 1B, 19-20).

In this case we also have video evidence concerning the incident. (CCRB Ex. 2) While the video does not clearly show the arrest of Person B nor is there any audio, it does show Respondent pushing Person A. The issue in this case is whether the pushing constitutes the wrongful use of force by Respondent against Person A.

Patrol Guide Section 203-11 imposes the standard to be followed when force is necessary to achieve legitimate police goals. It mandates that members of service "at the scene of a police incident" use the "minimum necessary force." In this case, I find that Respondent did initially attempt to ensure the safety of the officers arresting Person B by using verbal commands to attempt to stop Person A from interfering with the arrest. I also find that when these commands were not effective, it was appropriate for Respondent to use his hands to push Person A away from the scene. Without audio, it is not clear what, if anything, Person A was saying during the second and third pushes which may have led Respondent to conclude that further action was needed to clear Person A away from the scene of the arrest. Therefore, I accept Respondent's testimony that these first three pushes were necessary to ensure the safety of the other two officers. I do not however, accept Respondent's testimony as to why he continued to push Person A after Person A was clearly walking away from the scene. It is apparent from the video that, contrary to Respondent's testimony, the last push was not an unavoidable push where Respondent's momentum couldn't be stopped and therefore carried him into the push. Person A was several steps ahead of Respondent and was leaving the scene, when Respondent, who was walking, reached out and pushed Person A in the back. (CCRB Ex. 2, Camera 1 at 20:31:58 to 20:32:07) The last push therefore was clearly excessive given the

situation. As such it constituted a level of force that was neither necessary nor reasonable to achieve the legitimate police goal of preventing a bystander from interfering in an arrest or jeopardizing the safety of arresting officers. I therefore find Respondent Guilty.

PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on June 30, 1992. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

CCRB has requested a penalty of the loss of 10 vacation days. The CCRB did not cite to any prior Department cases in support of this request. In light of all the circumstances in this case in which the excessive force consisted of a push resulting in no known injuries, as well as the fact that Respondent has had a long career with the Department with many commendations and no prior formal disciplinary charges, I recommend a penalty of the loss of two vacation days. This is consistent with Disciplinary Case No. 2013-10687 (January 7, 2016) where Respondent was charged with wrongfully pushing a possible robbery suspect against the side of a van and then twisting the suspect's arm up behind his back. The penalty was the forfeiture of three vacation days.



Respectfully submitted,

Nancy R. Ryan

Assistant Deputy Commissioner

Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
LIEUTENANT CHRISTOPHER DEVANEY
TAX REGISTRY NO. 901448
DISCIPLINARY CASE NO. 2015-13213

On his last three annual performance evaluations, Respondent received an overall rating of 4.5 "Extremely Competent/Highly Competent," "5.0 Highly Competent," and a 4.5 "Extremely Competent/Highly Competent." He has been awarded 257 medals for Excellent Police Duty, 152 medals for Meritorious Police Duty, eight Commendations, and one medal for Meritorious Police Duty for Integrity. [REDACTED]

[REDACTED] He has no prior formal disciplinary record.

For your consideration.

Nancy R. Ryan
Assistant Deputy Commissioner Trials